UNITED DEVELOPMENT COMPANY SDN BHD A

v.

THE STATE GOVERNMENT OF SABAH & ANOR

HIGH COURT SABAH & SARAWAK, KOTA KINABALU B
ABDUL RAHMAN SEBLI JC
[SUIT NO: K21-16-2008]
25 MARCH 2010

LAND LAW: *Acquisition of land - Acquisition by government - Compulsory acquisition - Whether ultra vires s. 3 Land Acquisition Ordinance (Cap 69) (Sabah) and/or art. 13 Federal Constitution - Whether government acted mala fide by not putting land to use for purpose it was acquired - Whether plaintiff still owner of land - Land Acquisition Ordinance (Cap 69) (Sabah), ss. 3(2), 6(2), 7(1), (3) - Federal Constitution, art. 13(1)* C D

CONSTITUTIONAL LAW: *Right to property - Acquisition of property by government - Compulsory acquisition - Whether ultra vires s. 3 Land Acquisition Ordinance (Cap 69) (Sabah) and/or art. 13 Federal Constitution - Whether plaintiff still owner of land - Land Acquisition Ordinance (Cap 69) (Sabah), ss. 3(2), 6(2), 7(1), (3) - Federal Constitution, art. 13(1)* E

In this claim by the plaintiff, at the material time the registered owner of a piece of land ('said land') which the 1st defendant ('State Government') acquired in 1979 for RM1 million purportedly for the purpose of developing a project thereon, the following issues required determination: (i) whether the compulsory acquisition of the said land was *ultra vires* s. 3 of the Land Acquisition Ordinance (Cap 69) (Sabah) ('Ordinance') and/or art. 13 of the Federal Constitution ('FC'); (ii) whether the defendants by acquiring the said land had acted *mala fide* by not putting it to use for the purpose it was acquired; (iii) whether the plaintiff was still the owner of the said land and, if not, whether the plaintiff was entitled to take possession of the said land by paying or refunding to the defendants the sum of RM1 million without interest; and (iv) in that event, whether the defendants were liable to pay the plaintiff further compensation and/or damages. F G H

Held (allowing the plaintiff's claim): I

(1) In the present case, the conditions of sale and acquisition of the said land had not been approved by the Yang di-Pertua Negeri when the acquisition was gazetted on 19 and

A 26 December 1996. Section 6(2) of the Ordinance is clear and unambiguous. Thus, in the absence of approval by the Yang di-Pertua Negeri of the conditions of sale and acquisition, the plaintiff and the State Government had not reached a concluded agreement in respect of the said land. The State Government B had no discretion to bypass this statutory requirement and there was no contrary intention manifested by s. 6(2) of the Ordinance. Therefore, the State Government's failure to comply with the statutory requirement rendered the agreement void for illegality. The undue, inordinate and unexplained delay of 17 C years by the State Government to gazette the acquisition spoke volumes of its real intention in acquiring the said land. Under s. 3(2) of the Ordinance it was mandatory for the defendants to publish in two issues of the Gazette and to serve on the plaintiff copies of the declaration. In addition to that the D defendants were required to issue the notice of acquisition under s. 7(1) read with (3) of the Ordinance. Neither had been done. Since the acquisition of the said land was not done in accordance with the Ordinance, it contravened art. 13(1) of the FC. Consequently, the acquisition of the said land in 1979 was E unlawful and the first issue must thus be answered in favour of the plaintiff. (paras 13, 14, 15, 18 & 21)

(2) It was clear that the State Government had no intention to put the said land to use for the purpose it was acquired in 1979. F However, the State Government, having acquired the said land for a public purpose, was not free to use it for a purpose other than the gazetted purpose. The spirit of the Ordinance is to allow the State Government to acquire lands for specific public purposes. It does not give the State Government *carte blanche* to G deal with the acquired lands in any manner it deems fit post-acquisition. There is nothing in the Ordinance to confer on the State Government an unfettered discretion to deal with lands in any way it likes after acquisition. This in fact is contrary to s. 3(2)(d) of the Ordinance which makes it mandatory for the H State Government to specify in the declaration the purpose of the acquisition. To allow the government to change the use of the land at its whim after the acquisition, even for a public purpose, is not only illegal but unjust to the landowner because when he negotiated for compensation it was on the I understanding that his land was to be used for a particular, and not just any, public purpose. The government's wide powers to compel private individuals to give up their lands, *albeit* with

compensation, must not only be exercised in good faith but must manifestly be seen to be exercised in good faith. For the foregoing reasons, *mala fide* had been established against the State Government. The answer to the second issue was also in favour of the plaintiff. (paras 25, 29, 30, 31 & 32)

(3) Having regard to the findings on the first and second issues, the obvious answer to the third issue was in the affirmative because if the acquisition was unlawful for contravening art. 13(1) of the FC, the said land had not legally passed hands to the State Government. The acquisition being void and of no effect, the plaintiff was still the legal owner of the said land notwithstanding the fact that the title deed to the said land had been surrendered to the defendants. The fourth issue was inconsequential in light of the finding on the third issue. (paras 33 & 37)

Case(s) referred to:

Hong Lee Trading & Construction Sdn Bhd v. Taut Ying Realty Sdn Bhd [1991] 1 CLJ 121; [1991] 2 CLJ (Rep) 722 HC

Lori (Malaysia) Bhd v. Arab-Malaysian Finance Bhd [1999] 2 CLJ 997 FC

Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 PC

Pemungut Hasil Tanah, Daerah Barat Daya Pulau Pinang v. Ong Gaik Kee [1983] 1 LNS 14 FC

Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC

S Kulasingam & Anor v. Commissioner of Land, Federal Territory & Ors [1982] CLJ 65; [1982] CLJ (Rep) 314 FC

Simpsons Motor Sales (London) Ltd v. Hendon Corporation [1963] Ch 57

Singapore Woodcraft Manufacturing Co (Pte) Ltd v. Mok Ah Sai [1978] 1 LNS 183 HC

Syed Omar Abdul Rahman Taha Alsagoff & Anor v. The Government of the State of Johore [1978] 1 LNS 190 PC

Legislation referred to:

Contracts Act 1950, s. 2(g)

Federal Constitution, art. 13(1)

Government Contracts Act 1949, s. 3(1)

Land Acquisition Act 1960, s. 8(1)

Land Acquisition Ordinance (Cap 69) (Sabah), ss. 2, 3(2)(d), (3), (5), 6(2), 7(1), (3), 62(2)

For the plaintiff - Yunof Maringking (Trevor Maringking with him); M/s Maringking & Co
For the defendants - Nor Asiah Mohd Yusof SC; State AG's Chambers

Reported by Suresh Nathan

JUDGMENT

Abdul Rahman Sebli JC:

The Agreed Facts

[1] The plaintiff is a company incorporated under the Companies Act 1965 and was at the material time the registered owner of a piece of land consisting of an area of 1400 acres more or less held under Provisional Lease No. 1312 (the said land) situated at Kawang in the District of Papar, Sabah.

[2] Sometime in 1979 the 1st defendant (the State Government) acquired the said land purportedly for the purpose of developing a project known as "Skim Penempatan Semula" thereon. Pursuant to negotiations under sub-s. 62(2) of the Land Acquisition Ordinance (the LAO) between the plaintiff and the State Government the compensation price for the said land was fixed at RM1 million. The plaintiff had asked for RM1.5 million.

[3] The plaintiff could not surrender the original title deed of the said land as it was misplaced. To effect payment of the RM1 million compensation the plaintiff executed a Memorandum of Surrender of Title dated 17 October 1979. The sum was paid to the plaintiff on 10 October 1979 and there was no further negotiation between the parties thereafter.

[4] The acquisition was notified in the Gazette seventeen years later by way of Gazette Notification No. 708 dated 19 December 1996 and repeated on 26 December 1996. The second notification was necessary in order to cancel the title deed of the said land. The purpose of the acquisition, as declared in the Gazette Notification, was as follows:

> Pada menjalankan kuasa-kuasa yang diberikan kepadanya oleh subseksyen (1) Seksyen 3 Ordinan Pengambilan Tanah, Yang di-Pertua Negeri dengan ini mengisytiharkan bahawa pada pendapatnya tanah yang dinyatakan dalam Jadual bersamaan dengan ini hendaklah diambil bagi maksud awam, **iaitu untuk tapak Skim Penempatan Semula di Kawang, Daerah Papar.** (emphasis added)

[5] On 28 February 1997 the 2nd defendant registered the acquisition on the Land Registry copy of the title deed to enable the 2nd defendant to cancel the title deed of the said land.

[6] By letter dated 21 March 2001, the plaintiff requested for the return of the said land for a consideration sum of RM1 million on the ground that it was still not developed despite a lapse of 31 years since the acquisition in 1979.

[7] On 21 June 2004 the 2nd defendant sent a report to the Setiausaha Hasil Bumi on the proposed development of the said land. Apparently the State Government has now identified the said land as the site for "Taman Kekal Pengeluaran Makanan". The plaintiff was then duly informed of the State Government's refusal to return the land to the plaintiff.

Reliefs Sought

[8] The reliefs sought by the plaintiff are the following:

1. A declaration that the purported purchase of the said land by private treaty was *ultra vires* s. 6(2) of the LAO and thus null and void and that therefore the plaintiff is entitled to take repossession of the said land by paying or refunding to the 1st defendant the sum of RM1 million without interest.

2. A declaration that the defendants' purported acquisition of the said land was *mala fide* and/or *ultra vires* ss. 3 and/or 7 of the LAO or art. 13 of the Federal Constitution and thus at all material times the said land was and still is the plaintiff's lawful property.

3. A declaration that the said land was not required for a public purpose and/or since the defendants had alienated part of it to a third party, the plaintiff has reasonable expectation to repurchase it back at RM1 million for public purposes development as provided under s. 2 of the LAO.

4. Further or in the alternative, a declaration that the said land was acquired by the defendants negligently and/or in breach of their statutory duties and therefore the defendants are liable to pay the plaintiff general damages in respect thereof.

Issues To Be Tried

[9] The parties had come up with the following agreed issues to be tried:

(1) Whether the compulsory acquisition of the said land was *ultra vires* s. 3 of the LAO and/or art. 13 of the Federal Constitution.

(2) Whether the defendants by acquiring the said land had acted *mala fide* by not putting to use the said land for the specified purpose it was acquired.

(3) Whether the plaintiff is still the owner of the said land and if not, whether the plaintiff is entitled to take possession of the said land by paying or refunding to the defendants the sum of RM1 million without interest.

(4) In that event, whether the defendants are liable to pay the plaintiff further compensation and/or damages.

[10] No witnesses were called by either side as it was agreed between the parties that they would be relying entirely on the documentary evidence produced before the court. The reason for this course of action is that the issues to be tried are pure points of law and that it was not necessary to call any witness to testify as to facts.

First Issue

Whether The Compulsory Acquisition Of The Said Land Was Ultra Vires s. 3 Of The Lao And/Or Article 13 Of The Federal Constitution

[11] Article 13(1) of the Federal Constitution provides that "No person shall be deprived of property save in accordance with law." There is no dispute that the plaintiff was compulsorily deprived of the said land by way of private treaty pursuant to sub-s. 3(5) of the LAO which provides:

(5) Nothing in this Ordinance shall be deemed to prevent the acquisition of lands for public purposes and the settlement of any compensation therefor by private treaty.

[12] The question that calls for consideration is whether the purported acquisition of the land in 1979 and the declaration in the Gazette in 1996 contravened s. 3 of the LAO and therefore *ultra vires* art. 13(1) of the Federal Constitution. The plaintiff's contention is that the acquisition was unlawful as the agreement between the plaintiff and the State Government was never approved by the Yang di-Pertua Negeri as required by sub-s. 6(2) of the LAO. Subsection 6(2) of the LAO provides as follows:

(2) It shall not be necessary for the authorized officer to await the publication of the declaration before he endeavours to ascertain from the owner the term and condition on which he is willing to sell his land, *but no negotiations or agreement shall be deemed to be concluded unless and until the conditions of sale and acquisition have been approved by the Yang di-Pertua Negeri.* (emphasis added)

[13] In the present case it is not disputed that the conditions of sale and acquisition of the said land had not been approved by the Yang di-Pertua Negeri when the acquisition was gazetted on 19 December 1996 and 26 December 1996.

[14] Subsection 6(2) of the LAO is clear and unambiguous. It means what it says. Thus, in the absence of approval by the Yang di-Pertua Negeri of the conditions of sale and acquisition no concluded agreement had in fact been reached between the plaintiff and the State Government in respect of the said land. The State Government had no discretion to bypass this statutory requirement. In *Lori (Malaysia) Bhd v. Arab-Malaysian Finance Bhd* [1999] 2 CLJ 997 the Federal Court in dealing with the effect of a breach of a statutory provision said at p. 1016:

It is well settled that at Common Law, a contract or transaction in breach of a statutory prohibition and an associated contract is, in general, void for illegality even though the statute is silent as to its consequence and merely inflicts a penalty on the wrong doers (See *Menaka v. Lum Kum Chum (ibid)* at 94; *Phoenix Insurance v. Adams (ibid)* but this is subject only to any contrary intention manifested by the statute. (See, *Yango Pastoral Co. Pty. Ltd. v. First Chicago Australia Ltd. (ibid*).

[15] There is no contrary intention manifested by sub-s. 6(2) of the LAO. Therefore the State Government's failure to comply with the statutory requirement renders the agreement void for illegality. This answers the submission of the learned State Counsel that a valid contract had been concluded between the plaintiff and the State Government based on the conduct of the plaintiff in accepting the compensation sum of RM1 million. On the question of estoppel by conduct the Federal Court in *Lori (M) Bhd* made the following observations at p. 1011:

> The case of *Re a Bankruptcy Notice* [1924] 2 Ch. D 76 at 96 (per Atkin LJ) shows that there is, in most cases, no estoppel against a defendant who wishes to set up the statutory invalidity of some contract or transaction on which he is being sued, despite the fact that by conduct or other means he would otherwise be bound by estoppels. This point is fully discussed in the Privy Council case of *Kok Hoong v. Leong Cheong Mines Ltd.* [1964] 1 All ER 300 (per Viscount Radcliffe especially at pp. 307 to 309 C). The case of *Kan Yeow Weng v. Keng Soon Motor Finance* [1962] MLJ (per H.T. Ong J at p. 394 B) can be seen as an application of this principle.

[16] The gap of 17 years between the acquisition and the gazette notification is relevant in determining whether the acquisition process had in fact been completed. If the acquisition was duly completed in 1979 as claimed by the defendants why then did the State Government have to wait until 1996 to gazette the acquisition? 17 years by any measure of time is far too long to carry out such a simple process. The only conclusion that can be drawn is that the acquisition was incomplete. In this regard the Privy Council decision in *Pemungut Hasil Tanah Daerah Barat Daya, Penang v. Kam Gin Paik & Ors* [1986] 1 CLJ 283; [1986] CLJ (Rep) 33 is relevant. In delivering the judgment of the Council Lord Keith of Kinkel quoted with approval the following speech by Upjohn LJ in *Simpsons Motor Sales (London) Ltd v. Hendon Corporation* [1963] Ch. 57, 82:

> If the acquiring authority do not proceed within a reasonable time to acquire the property and pay the compensation, they may well lose their rights to enforce the notice. It would be most unreasonable to permit an acquiring authority, having given notice to treat, to sit on their rights and defer enforcement of the notice until it suits them.

[17] The speech illustrates the need for the authority to act with due diligence and within a reasonable time. In *Pemungut Hasil Tanah, Daerah Barat Daya Pulau Pinang v. Ong Gaik Kee* [1983] 1 LNS 14 FC a decision which the Privy Council in the above mentioned case affirmed, Salleh Abbas CJ (Malaya) (as he then was) said that proceedings for acquisition of land under the Land Acquisition Act 1960 (the LAA) are meant to be a continuous motion. This is what His Lordship said:

> It is true that section 10 of the Act does not prescribe the time within which the inquiry into the compensation must be held but looking at the Act as a whole no one could deny that the proceedings under the Act are meant to be a continuous motion so that no such interruption or such undue delay or stoppage as to amount to an abandonment of the acquisition could be regarded as within this motion. Under section 38 of the Interpretation and General Clauses Ordinance, 1948 it is provided that:
>
> > Where no time is prescribed or allowed within which anything shall be done, such thing shall be done with all **convenient** speed and as often as the prescribed occasion arises. (emphasis added)
>
> What then is the "convenient speed"? In our view it must be "as soon as possible" or "within a reasonable time", and not "as late as possible". Obviously what amounts to "convenient speed" must vary from case to case and in our judgment seven years delay is certainly not a "convenient speed" as it is far outside the normal period of time that no reasonable authority could ever regard as reasonable. That being the case the court is entitled to strike down the impugned acquisition proceedings as illegal. (*Regina v. St Albans Crown Court Ex-parte Cinnamond* [1981] QB 480 and *Regina v. Tottenham Justices Ex-parte Dwarkados Joshi* [1982] 1 WLR 631).

[18] The undue, inordinate and unexplained delay of 17 years by the State Government to gazette the acquisition speaks volumes of its real intention in acquiring the said land. I shall touch more on this when dealing with the second issue to be tried. Under sub-s. 3(2) of the LAO it was mandatory for the defendants to publish in two issues of the Gazette and to serve on the plaintiff copies of the declaration. In addition to that the defendants were required to issue the notice of acquisition under sub-s. 7(1) read with sub-s. 7(3) of the LAO. Neither of these had been done.

[19] As a side issue it was argued by the learned State Counsel that the private treaty was not a Government contract and that therefore sub-s. 3(1) of the Government Contracts Act 1949 (the GCA) has no application. This was in response to the plaintiff's argument that the requirements of sub-s. 3(1) of the GCA had not been complied with. Subsection 3(1) of the GCA provides as follows:

> 3(1) All contracts made in Malaysia on behalf of a State Government shall, if reduced in writing, be made in the name of the Government of that State, and may be signed by the Chief Minister of the State, or by any public officer duly authorized in writing by the Chief Minister, either specially in any particular case, or generally for all contracts below a certain value in his department or otherwise as may be specified in the authorization.

[20] The short answer to this argument is that it does not matter because an unenforceable contract, be it Government contract or otherwise is void: see s. 2(g) of the Contracts Act 1950.

[21] Since the acquisition of the said land was not done in accordance with the LAO it contravened art. 13(1) of the Federal Constitution. Consequently the acquisition of the said land in 1979 was unlawful. The first issue to be tried must therefore be answered in favour of the plaintiff.

Second Issue

Whether The Defendants By Acquiring The Said Land Had Acted Mala Fide By Not Putting To Use The Said Land For The Specified Purpose It Was Acquired

[22] The plaintiff's contention is that the defendants had acted in bad faith in purporting to acquire the said land urgently by private treaty and in the name of public purpose when in fact it was not needed for a public purpose at all. There is no dispute that the said land was never used for the specified purpose it was acquired, namely for "Skim Penempatan Semula di Kawang, Daerah Papar".

[23] As a follow up to the private treaty in 1979 the 2nd defendant issued the following letter to the Pengurus Besar, Koperasi Pembangunan Desa. The letter reads:

Pengurus Besar, 24hb Januari, 1980

Koperasi Pembangunan Desa,
Komplex SEDCO.,
Kota Kinabalu.
Kawang Estate

You are hereby informed that the whole of P.L. 1312 (1391.35 acres) has been surrendered to Government.

2. You can with immediate effect enter the land to carry out the projects for which this land was acquired.

BERKHIDMAT UNTUK NEGARA

Sgd.
(Bernard G. Dompok)
Juru Nilai
b.p. Pengarah Tanah dan Ukur

[24] Judging from the tone of the letter it is obvious that the project was to be carried out immediately. Yet, until today, more than 30 years after the letter was issued the project has yet to take off the ground. Now the State Government says the said land is earmarked for "Taman Kekal Pengeluaran Makanan" and this too after the plaintiff asked for its return. In the report prepared by the 2nd defendant dated 21 June 2004 (p. 54 of encl. 46) the 2nd defendant candidly admitted that the said land was not used for the purpose it was acquired. The relevant part of the report reads:

> Sejak pengambilan balik tanah PL.1312, kawasan tersebut tidak ada dibangunkan sesuai dengan tujuan pengambilannya iaitu untuk penempatan semula di Kawang, Papar. Hanya pada tahun 2001, kawasan bekas estet Kawang telah dikenalpasti oleh Jabatan Pertanian untuk dijadikan sebagai Taman Kekal Pengeluaran Makanan (TKPM).

[25] In my judgment the State Government's failure to implement the "Skim Penempatan Semula di Kawang, Daerah Papar" until today is evidence of *mala fide* on its part. It is clear that the State Government has no intention to put the said land to use for the purpose it was acquired in 1979.

[26] The learned State Counsel strenuously argued that the declaration made pursuant to sub-s. 3(1) of the LAO is conclusive proof that the said land was acquired for a public purpose and that

therefore the plaintiff's claim is misconceived. With due respect to the learned State Counsel she is missing the point. The issue is not whether the acquisition was or was not for a public purpose. The issue is whether the State Government had acted in bad faith. Clearly by virtue of sub-s. 3(1) of the LAO when the State Government declares that the acquisition of any land is for a public purpose then the acquisition is deemed to be for a public purpose. Subsection 3(1) of the LAO is reproduced below:

> If the Yang di-Pertua Negeri considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made in the manner provided by this section and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose. (emphasis added)

[27] This does not mean however that the exercise of the discretion is beyond reproach. In *S Kulasingam & Anor v. Commissioner Land, Federal Territory & Ors* [1982] CLJ 65; [1982] CLJ (Rep) 314 the Federal Court, relying on the Privy Council decision in *Syed Omar bin Abdul Rahman Taha Alsagoff & Anor v. The Government of the State of Johore* [1978] 1 LNS 190 held that the purpose of the compulsory acquisition can be questioned, but only if it can be shown that the acquiring authority has misconstrued its statutory powers or if bad faith is established.

[28] It is trite law that discretionary powers are to be exercised properly and in good faith. In *Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135 Raja Azlan Shah CJ (as His Majesty then was) when speaking of the exercise of discretion said at p. 148:

> In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law.

[29] The question is whether, having acquired the said land for a public purpose (assuming for a moment that the acquisition was lawful) the State Government is free to use it for a purpose other than the gazetted purpose, namely "Skim Penempatan Semula di Kawang, Daerah Papar". I would think not. The spirit of the LAO is to allow the State Government to acquire lands for specific public purposes. It does not give the State Government *carte blanche* to deal with the acquired lands in any manner it deems fit post acquisition. If for instance a piece of land was acquired for building a hospital it cannot be used as a dump site.

[30] There is nothing in the LAO to confer on the State Government an unfettered discretion to deal with the land in any way it likes after acquisition. This in fact will be contrary to sub-s. 3(2)(d) of the LAO which makes it mandatory for the State Government to specify in the declaration the purpose of the acquisition. The legislature, it is often said does not legislate in vain. The mandatory requirement under sub-s. 3(2)(d) of the LAO reflects the legislative intent, which is to allow acquisition for specific public purposes only. Governments come and go and policies change but unless and until the gazette notification is revoked the land must be used for the purpose it was acquired. Whether the government can revoke the notification and if so under what circumstances it can do so is a question that has to be argued some other time.

[31] To allow the government to change the land use at its whim after the acquisition, even for a public purpose is not only illegal but unjust to the landowner because when he negotiated for compensation it was on the understanding that his land was to be used for a particular public purpose, not any public purpose. The wide powers of the government to compel private individuals to give up their lands, *albeit* with compensation must not only be exercised in good faith but must manifestly be seen to be exercised in good faith. Landowners must be protected against compulsory deprivation of their properties for some oblique motive disguised as "public purpose". The possibility of this happening cannot be discounted as the State Government in the present case in fact tried to alienate the said land to a third party in 1996 as can be seen from the document at p. 2 of encl. 47.

A **[32]** For the foregoing reasons I am constrained to hold that *mala fide* has been established against the State Government. The answer to the second issue must therefore be in favour of the plaintiff as well.

B **Third Issue**

Whether The Plaintiff Is Still The Owner Of The Said Land And If Not, Whether The Plaintiff Is Entitled To Take Possession Of The Said Land By Paying Or Refunding To The Defendants The Sum Of RM1 Million Without Interest

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[33] Having regard to my findings on the first and second issues the obvious answer to this question is yes because if the acquisition was unlawful for contravening art. 13(1) of the Federal Constitution, the said land has not legally passed hand to the State Government. D The acquisition being void and of no effect the plaintiff is still the legal owner of the said land, notwithstanding the fact that the title deed to the land had been surrendered to the defendants.

[34] In *Hong Lee Trading & Construction Sdn Bhd v. Taut Ying* E *Realty Sdn Bhd* [1991] 1 CLJ 121; [1991] 2 CLJ (Rep) 722 it was held by Lamin J (as he then was) that by virtue of sub-s. 8(1) of the LAA which is in *pari materia* with sub-s. 3(3) of the LAO the actual acquisition takes place at the time or soon after the declaration has been gazetted and the land owner is duly served with F the notice of the decision to acquire.

[35] In *Singapore Woodcraft Manufacturing Co (Pte) Ltd v. Mok Ah Sai* [1978] 1 LNS 183 it was held that only upon serving the relevant statutory notice on the owners that all interest in the land comes to an end and the land becomes vested absolutely in the G State Authority free from encumbrances. As mentioned earlier in this judgment the defendants failed to comply with the mandatory requirements of sub-s. 3(2) and sub-s. 7(1) read with sub-s. 7(3) of the LAO.

H **[36]** There is therefore no merit in the learned State Counsel's contention that the surrendering of the title deed was a mere formality and that the said land had passed to the State Government free from pre-existing legal impediments.

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Fourth Issue

In That Event, Whether The Defendants Are Liable To Pay The Plaintiff Further Compensation And/Or Damages

[37] This issue is inconsequential in the light of my finding on the third issue.

Conclusion

[38] For the reasons stated above I am satisfied that the plaintiff is entitled to the reliefs sought. Consequently the plaintiff's claim was allowed in terms of the statement of claim dated 27 June 2008. Costs of the proceeding to be borne by the defendants, to be taxed unless otherwise agreed.